IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 292 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAILESH @ MUNNO VIJAYBHAI CHAUHAN

Versus

DEPUTY POLICE COMMISSIONER

Appearance:

MR RD DAVE for Petitioner

MR KT DAVE, APP, for Respondents

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 05/05/2000

ORAL JUDGEMENT

1. Assistant Commissioner of Police, Rajkot City, Rajkot, served a notice on the petitioner on September 1, 1999, under Section 59 of the Bombay Police Act, calling upon him to show cause as to why he should not be externed for a period of two years from the areas of Rajkot City and from the districts of Rajkot (Rural),

Jamnagar, Junagadh, Amreli, Kutch, Bhavnagar and Surendranagar, because of his activities alleged in the notice. After the reply was submitted, inquiry was conducted, as required under Section 59 of the Bombay Police Act, wherein the petitioner examined eight witnesses in his defence to indicate that he was not involved in any nefarious activities. However, the Deputy Commissioner of Police passed an order under Section 56(9) of the Bombay Police Act on December 30, 1999, externing the petitioner from the areas of Rajkot City, Rajkot (Rural) and Surendranagar district. The above order was carried in appeal under Section 60 of the Bombay Police Act. The appeal came to be dismissed and, therefore, the present petition.

2. The petitioner has challenged the order of externment on various counts. Mr. Dave, learned advocate appearing for the petitioner, has raised many contentions. He submitted that the order suffers from the vice of non-application of mind. Certain factors which do not find place in the notice are considered and stated in the order of externment by the externing authority. He further submitted that the petitioner is externed from the contiguous districts of Rajkot (Rural) and Surendranagar by stating that, if he is not externed from contiguous districts, he may operate from those districts with the help of his associates. Mr. Dave submitted that there is no material to indicate that the petitioner could have operated, as stated in the order of externment. He, therefore, submitted that the petition may be allowed.

3. Mr. K.T. Dave, learned Additional Public Prosecutor, has opposed this petition.

4. Having regard to rival side contentions, the first and foremost ground that would affect the order of externment is that, in the notice under Section 59, lit was proposed to extern the petitioner from contiguous districts of Rajkot (Rural), Junagadh, Jamnagar, Amreli, Bhavnagar, Kutch and Surendranagar. In the notice, no reasons were assigned for this proposal. Against this, in the order of externment, the petitioner is externed from contiguous districts of Rajkot (Rural) and Surendranagar only. The reasons for externing the petitioner from contiguous districts, as assigned, are that he may operate from the adjoining districts with the help of his associates. There is no material to indicate that the petitioner has any such associates in such adjoining districts. There is no material to indicate that he has roots in society in those districts, which

may possibilise the alleged operation as shown in the order of detention. Even if what is stated in the order of detention is accepted at face value, then there was no reason for the authority not to extern the petitioner from other contiguous districts, as no specific reasons are given to indicate any moorings of the petitioner in the adjoining districts from which he is externed. This Court is, therefore, of the view that, since reasons for externing from contiguous districts are not given in the notice, it has affected the right of the detenu of making an effective representation. It is also found that the reasons for externing the petitioner from adjoining districts, as indicated in the notice, do not seem to be genuine as the powers are exercised only in respect of two adjoining districts, whereas the reasons are of such a wide import that they would be applicable to all adjoining districts. The result, therefore, is that the order of externment in respect of contiguous districts cannot be said to be well founded and cannot be supported. The petition, therefore, deserves to be allowed.

5. In the result, the petition is allowed. The impugned order of externment dated December 30, 1999, passed by the Deputy Commission of Police, Rajkot City as also the order of the appellate authority dated February 24, 2000 are hereby quashed and set aside. Rule is made absolute accordingly.

[A.L. DAVE, J.]

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